

**STATE OF INDIANA  
BEFORE THE ALCOHOL & TOBACCO COMMISSION**

**IN THE MATTER OF  
THE PERMIT OF:**

**JERRY'S HIDEAWAY  
D/B/A NORTHSTAR TAVERN  
2301 LAFAYETTE AVE.  
TERRE HAUTE, IN 47805**

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**PERMIT NO. RR84-03099**

**Applicant.**

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**I. BACKGROUND OF THE CASE**

Jerry's Hideaway d/b/a Northstar Tavern ("Applicant" or "Permittee"), 2301 Lafayette Ave., Terre Haute, Indiana ("permit premises"), permit number RR84-03099, pro se, is the Applicant for a renewal of a 210 Alcohol and Tobacco Commission ("ATC" or "Commission") liquor, beer and wine permit. The application was assigned to the Alcoholic Beverage Board of Vigo County ("Local Board"). The Local Board held a hearing on September 20, 2010 ("LB Hearing") and voted three (3) to one (1) to grant the application. The ATC adopted the Local Board's recommendation on October 5, 2010, at its regular public meeting.

The Remonstrator, Gail L. Phillips, filed a timely Petition for Intervention and Notice of Appeal and the matter was assigned to ATC Hearing Judge E. Edward Dunsmore ("Hearing Judge"). The Hearing Judge granted the Motion to Intervene on February 21, 2011. An appeal hearing ("Appeal Hearing"), conducted by Commissioner Frank W. Guthrie, was held on June 22, 2011, and at that time, witnesses were sworn, evidence was received and the matter was taken under advisement. The Commissioner/Hearing Judge, having read the typed transcript of the LB Hearing, the evidence submitted to the ATC during the Appeal Hearing, and the contents of the entire ATC file, as well as having taken official notice of the same, as well as the codes and standards adopted by this state, now tenders his Findings of Fact and Conclusions of Law to the Commission for its consideration.

**II. PROCEDURAL HISTORY**

1. On July 8, 2010, Applicant filed its Application for a Renewal of Permit.
2. On September 20, 2010, the Local Board held a hearing and voted three (3) to one (1) to grant the application for one (1) year.
3. On October 5, 2010, the ATC adopted the Local Board's recommendation.
4. On October 22, 2010, the Intervener timely filed her petition for intervener status, request for administrative review and request for appeal hearing within the fifteen (15) day deadline required by 905 IAC 1-36-2.

5. On February 21, 2011, the Hearing Judge granted the Remonstrator intervener status.
6. On June 22, 2011, the Commissioner/Hearing Judge conducted a hearing regarding the Intervener's appeal.

### **III. EVIDENCE BEFORE THE LOCAL BOARD**

- A. The following individuals testified before the Local Board in favor of the Applicant in this case:

1. Jerry Wilson, owner of Applicant and Permittee.
2. Jerry Wilson Jr., employee of Applicant and Permittee.

- B. The following individuals testified before the Local Board against the Applicant in this cause:

Gail L. Phillips, Intervener.

- C. The following evidence was introduced and admitted before the Local Board in favor of the Applicant in this cause:

None

- D. The following evidence was introduced and admitted before the Local Board against the Applicant in this cause:

1. Various exhibits relating to noise complaints and police activity at the premises.

### **IV. EVIDENCE BEFORE THE COMMISSION**

- A. The following individuals testified before the Commission in favor of the Applicant in this cause:

1. Jerry Wilson, owner of Applicant and Permittee.
2. Jerry Wilson Jr., employee of Applicant and Permittee.

- D. The following individuals testified before the Commission against the Applicant in this cause:

Gail L. Phillips, Intervener

- C. The following evidence was introduced and admitted before the Commission in favor of the Applicant in this cause:

None.

D. The following evidence was introduced and admitted before the Commission against the Applicant in this cause:

1. Various documents and pictures relating to the neighborhood and noise complaints.

## **V. FINDINGS OF FACT**

1. Jerry's Hideaway, d/b/a Northstar Tavern ("Applicant"), located at 2301 Lafayette Ave., Terre Haute Indiana 47805, is an applicant for a renewal of ATC type 210-1 liquor, beer and wine permit under permit #RR84-03099. (ATC File)
2. Numerous incidents of noise and criminal activity have occurred outside this permit premises which have led to complaints by the Intervener and others.
3. The Applicant and its employees have cooperated with the police and have addressed behavior inside their premises.

## **IV. CONCLUSIONS OF LAW**

1. The ATC has jurisdiction over this matter pursuant to Ind. Code 7.1-1-2-2; Ind. Code 7.1-2-3-9.
2. The permit application was properly submitted pursuant to Ind. Code 7.1-3-1-4.
3. The ATC is commissioned to act upon proper application. *Id.*
4. The Commissioner/Hearing Judge conducted a *de novo* review of the appeal on behalf of the ATC, including a public hearing. 905 IAC 1-36-7(a); Ind. Code 7.1-3-19-11.5.
5. The Hearing Judge may consider as evidence all documents in the ATC File, including the transcript of proceedings and exhibits before the Local Board. 905 IAC 1-36-7(a).
6. The Hearing Judge may also consider as evidence any codes and standards that have been adopted by an agency of this state. 905 IAC 1-36-8(e).
7. Evidence at the hearing was received in accordance with the Indiana Administrative Code and the Commission's rules. The findings here are based exclusively upon the substantial and reliable evidence in the record of proceedings and on matters officially noted in the proceeding. 905 IAC 1-37-11(e); Ind. Code 4-21.5-3-27(d).
8. Jerry's Hideaway d/b/a Northstar Tavern, permit #RR84-03099, is an applicant for renewal of an ATC Type 210 liquor, beer and wine permit.

9. The Commission, in its absolute discretion shall issue, suspend or revoke, except as otherwise provided in Title 7.1, a retailer's or dealer's permit of any type. Ind. Code 7.1-3-19-1.
10. The Commission may investigate in any manner it deems best to enable it to act upon the application in a particular case. The Commission may grant or refuse the application accordingly as it deems the public interest will be served best. The action of the Commission for a retailer's or dealer's permit of any type shall be final. Ind. Code 7.1-3-19-10.
11. The Commission may issue a liquor retailer's permit only to a high grade club, restaurant, or hotel, which has a high and fine reputation for decency and law obedience. In no case shall a liquor retailer's permit be issued or stand unrevoked if the owner, manager or management of the establishment is not a person of strict integrity and high repute, or if the premises have been padlocked. Ind. Code 7.1-3-9-10.
12. In determining an applicant's, or permittee's eligibility to hold, renew or continue to hold a permit, particularly whether the applicant is of good moral character and of good repute, the Commission shall consider whether acts or conduct of the applicant, permittee or his employees or agents, would constitute action or conduct prohibited by the Indiana Penal Code (IC 35-41-1-1 *et. seq.*), or a criminal offense under the laws of the United States. 905 IAC 1-27-1.
13. The Commission shall follow the recommendation of the majority of the Local Board unless the Commission determines that to follow the recommendation would be:
  - 1) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;
  - 2) Contrary to a constitutional right, power, privilege, or immunity;
  - 3) In excess of or contrary to statutory jurisdiction, authority, limitation or rights;
  - 4) Without observation of procedure required by law;
  - 5) Unsupported by substantial evidence.I.C. 7.1-3-19-11.
14. The weight of the evidence and the burden of proof is with the Applicant and the evidence fails to support a finding of any the factors listed in Conclusion numbered 13 above.
15. The Local Board granted this permit renewal with sufficient evidence that supports a finding that this permit renewal request should be granted for one (1) year.

Therefore, it is ORDERED, ADJUDGED AND DECREED that the finding of the Local Board to grant this application for renewal was based on substantial evidence and must be upheld.

It is hereby further ORDERED, ADJUDGED AND DECREED that the evidence adduced at the LB Hearing and the Appeal Hearing was with the Applicant, and the Intervener's appeal of the decision of the Local Board is hereby DENIED.

DATED: \_\_\_\_\_

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Frank W. Guthrie  
Commissioner/Hearing Judge